

**IC 16-36**

**ARTICLE 36. MEDICAL CONSENT**

**IC 16-36-1**

**Chapter 1. Health Care Consent**

**IC 16-36-1-1**

**"Health care"**

Sec. 1. As used in this chapter, "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. The term includes admission to a health care facility.

*As added by P.L.2-1993, SEC.19.*

**IC 16-36-1-2**

**"Representative"**

Sec. 2. As used in this chapter, "representative" means:

- (1) an individual at least eighteen (18) years of age;
- (2) a corporation;
- (3) a trust;
- (4) a limited liability company;
- (5) a partnership;
- (6) a business trust;
- (7) an estate;
- (8) an association;
- (9) a joint venture;
- (10) a government or political subdivision;
- (11) an agency;
- (12) an instrumentality; or
- (13) any other legal or commercial entity;

appointed to consent to health care of another under this chapter.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.5.*

**IC 16-36-1-3**

**Consent for own health care; minor's blood donation**

Sec. 3. (a) Except as provided in subsections (b) through (d), unless incapable of consenting under section 4 of this chapter, an individual may consent to the individual's own health care if the individual is:

- (1) an adult; or
- (2) a minor and:
  - (A) is emancipated;
  - (B) is:
    - (i) at least fourteen (14) years of age;
    - (ii) not dependent on a parent for support;
    - (iii) living apart from the minor's parents or from an individual in loco parentis; and
    - (iv) managing the minor's own affairs;

- (C) is or has been married;
- (D) is in the military service of the United States; or
- (E) is authorized to consent to the health care by any other statute.

(b) A person at least seventeen (17) years of age is eligible to donate blood in a voluntary and noncompensatory blood program without obtaining parental permission.

(c) A person who is sixteen (16) years of age is eligible to donate blood in a voluntary and noncompensatory blood program if the person has obtained written permission from the person's parent.

(d) An individual who has, suspects that the individual has, or has been exposed to a venereal disease is competent to give consent for medical or hospital care or treatment of the individual.

*As added by P.L.2-1993, SEC.19. Amended by P.L.4-2010, SEC.1.*

#### **IC 16-36-1-4**

##### **Incapacity to consent; invalid consent**

Sec. 4. (a) An individual described in section 3 of this chapter may consent to health care unless, in the good faith opinion of the attending physician, the individual is incapable of making a decision regarding the proposed health care.

(b) A consent to health care under section 5, 6, or 7 of this chapter is not valid if the health care provider has knowledge that the individual has indicated contrary instructions in regard to the proposed health care, even if the individual is believed to be incapable of making a decision regarding the proposed health care at the time the individual indicates contrary instructions.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-5**

##### **Persons authorized to consent for incapable parties; minors**

Sec. 5. (a) If an individual incapable of consenting under section 4 of this chapter has not appointed a health care representative under section 7 of this chapter or the health care representative appointed under section 7 of this chapter is not reasonably available or declines to act, consent to health care may be given:

- (1) by a judicially appointed guardian of the person or a representative appointed under section 8 of this chapter; or
- (2) by a spouse, a parent, an adult child, or an adult sibling, unless disqualified under section 9 of this chapter, if:
  - (A) there is no guardian or other representative described in subdivision (1);
  - (B) the guardian or other representative is not reasonably available or declines to act; or
  - (C) the existence of the guardian or other representative is unknown to the health care provider; or
- (3) by the individual's religious superior, if the individual is a member of a religious order and:

- (A) there is no guardian or other representative described in subdivision (1);
  - (B) the guardian or other representative is not reasonably available or declines to act; or
  - (C) the existence of the guardian or other representative is unknown to the health care provider.
- (b) Consent to health care for a minor not authorized to consent under section 3 of this chapter may be given by any of the following:
- (1) A judicially appointed guardian of the person or a representative appointed under section 8 of this chapter.
  - (2) A parent or an individual in loco parentis if:
    - (A) there is no guardian or other representative described in subdivision (1);
    - (B) the guardian or other representative is not reasonably available or declines to act; or
    - (C) the existence of the guardian or other representative is unknown to the health care provider.
  - (3) An adult sibling of the minor if:
    - (A) there is no guardian or other representative described in subdivision (1);
    - (B) a parent or an individual in loco parentis is not reasonably available or declines to act; or
    - (C) the existence of the parent or individual in loco parentis is unknown to the health care provider.
- (c) A representative delegated authority to consent under section 6 of this chapter has the same authority and responsibility as the individual delegating the authority.
- (d) An individual authorized to consent for another under this section shall act in good faith and in the best interest of the individual incapable of consenting.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.6.*

#### **IC 16-36-1-6**

##### **Delegated authority to consent on behalf of incapable party**

Sec. 6. (a) A representative authorized to consent to health care for another under section 5(a)(2), 5(b)(2), or 5(b)(3) of this chapter who for a time will not be reasonably available to exercise the authority may delegate the authority to consent during that time to another representative not disqualified under section 9 of this chapter. The delegation:

- (1) must be in writing;
  - (2) must be signed by the delegate;
  - (3) must be witnessed by an adult; and
  - (4) may specify conditions on the authority delegated.
- (b) Unless the writing expressly provides otherwise, the delegate may not delegate the authority to another representative.
- (c) The delegate may revoke the delegation at any time by notifying orally or in writing the delegate or the health care provider.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.7.*

**IC 16-36-1-7**

**Appointed representative; qualifications; conditions; effective date; duties; resignation; revocation of appointment**

Sec. 7. (a) An individual who may consent to health care under section 3 of this chapter may appoint another representative to act for the appointor in matters affecting the appointor's health care.

(b) An appointment and any amendment must meet the following conditions:

- (1) Be in writing.
- (2) Be signed by the appointor or by a designee in the appointor's presence.
- (3) Be witnessed by an adult other than the representative.

(c) The appointor may specify in the appointment appropriate terms and conditions, including an authorization to the representative to delegate the authority to consent to another.

(d) The authority granted becomes effective according to the terms of the appointment.

(e) The appointment does not commence until the appointor becomes incapable of consenting. The authority granted in the appointment is not effective if the appointor regains the capacity to consent.

(f) Unless the appointment provides otherwise, a representative appointed under this section who is reasonably available and willing to act has priority to act in all matters of health care for the appointor, except when the appointor is capable of consenting.

(g) In making all decisions regarding the appointor's health care, a representative appointed under this section shall act as follows:

- (1) In the best interest of the appointor consistent with the purpose expressed in the appointment.
- (2) In good faith.

(h) A health care representative who resigns or is unwilling to comply with the written appointment may not exercise further power under the appointment and shall so inform the following:

- (1) The appointor.
- (2) The appointor's legal representative if one is known.
- (3) The health care provider if the representative knows there is one.

(i) An individual who is capable of consenting to health care may revoke:

- (1) the appointment at any time by notifying the representative orally or in writing; or
- (2) the authority granted to the representative by notifying the health care provider orally or in writing.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.8.*

**IC 16-36-1-8**

**Probate court petition; hearing; notice; findings**

Sec. 8. (a) A health care provider or any interested person (as defined in IC 30-5-2-6) may petition the probate court in the county where the individual who is the subject of the petition is present for purposes of receiving health care to:

- (1) make a health care decision or order health care for an individual incapable of consenting; or
- (2) appoint a representative to act for the individual.

(b) Reasonable notice of the time and place of hearing a petition under this section must be given to the following:

- (1) The individual incapable of consenting.
- (2) Anyone having the care and custody of the individual.
- (3) Those persons in the classes described in section 5 of this chapter who are reasonably available and who are designated by the court.

(c) The probate court may modify or dispense with notice and hearing if the probate court finds that delay will have a serious, adverse effect upon the health of the individual.

(d) The probate court may order health care, appoint a representative to make a health care decision for the individual incapable of consenting to health care with the limitations on the authority of the representative as the probate court considers appropriate, or order any other appropriate relief in the best interest of the individual if the probate court finds the following:

- (1) A health care decision is required for the individual.
- (2) The individual is incapable of consenting to health care.
- (3) There is no person authorized to consent or a person authorized to consent to health care:
  - (A) is not reasonably available;
  - (B) declines to act; or
  - (C) is not acting in the best interest of the individual in need of health care.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.9.*

**IC 16-36-1-9**

**Disqualification of person to consent for patient or health care recipient**

Sec. 9. (a) An individual who may consent to the individual's own health care under section 3 of this chapter may disqualify others from consenting to health care for the individual.

(b) A disqualification must meet the following conditions:

- (1) Be in writing.
- (2) Be signed by the individual.
- (3) Designate those disqualified.

(c) A health care provider who knows of a written disqualification may not accept consent to health care from a disqualified individual.

(d) An individual who knows that the individual has been disqualified to consent to health care for another may not act for the

other under this chapter.  
*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-10**

##### **Immunity of health care providers or consenting persons; good faith requirement**

Sec. 10. (a) A health care provider acting or declining to act in reliance on the consent or refusal of consent of a representative who the provider believes in good faith is authorized to consent to health care is not subject to:

- (1) criminal prosecution;
- (2) civil liability; or
- (3) professional disciplinary action;

on the ground that the representative who consented or refused to consent lacked authority or capacity.

(b) A health care provider who believes in good faith that a representative is incapable of consenting is not subject to:

- (1) criminal prosecution;
- (2) civil liability; or
- (3) professional disciplinary action;

for failing to follow the representative's direction.

(c) A person who in good faith believes the representative is authorized to consent or refuse to consent to health care for another under this chapter or another statute is not subject to:

- (1) criminal prosecution; or
- (2) civil liability if the person exercises due care;

on the ground that the representative lacked authority to consent.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.10.*

#### **IC 16-36-1-11**

##### **Disclosure of medical information to representative authorized to consent**

Sec. 11. (a) A representative under this chapter has the same right that the authorizing individual has to receive information relevant to the contemplated health care and to consent to the disclosure of medical records to a health care provider.

(b) Disclosure of information regarding contemplated health care to a representative is not a waiver of an evidentiary privilege or of the right to assert confidentiality.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.11.*

#### **IC 16-36-1-12**

##### **Effect of chapter on other law; personal liability of representatives for costs of care**

Sec. 12. (a) This chapter does not affect Indiana law concerning an individual's authorization to do the following:

- (1) Make a health care decision for the individual or another individual.

(2) Provide, withdraw, or withhold medical care necessary to prolong or sustain life.

(b) This chapter does not affect the requirements in any other Indiana law concerning consent to observation, diagnosis, treatment, or hospitalization for a mental illness.

(c) This chapter does not authorize a representative to consent to any health care that is prohibited under Indiana law.

(d) This chapter does not affect any requirement of notice to others of proposed health care under any other Indiana law.

(e) This chapter does not affect Indiana law concerning the following:

(1) The standard of care of a health care provider required in the provision of health care.

(2) When consent is required for health care.

(3) Elements of informed consent for health care.

(4) Other methods of consent authorized by Indiana law.

(5) Health care being provided in an emergency without consent.

(f) This chapter does not prevent an individual capable of consenting to the individual's own health care or to the health care of another under this chapter, including those authorized under sections 5 through 7 of this chapter, from consenting to health care administered in good faith under religious tenets of the individual requiring health care.

(g) A representative consenting to health care for an individual under this chapter does not become personally liable for the cost of the health care by virtue of that consent.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.12.*

### **IC 16-36-1-13**

#### **Euthanasia**

Sec. 13. This chapter does not authorize euthanasia.

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-1-14**

#### **Incorporation of IC 30-5 by reference; appointment of health care representative**

Sec. 14. (a) The health care consent provisions under IC 30-5 are incorporated by reference into this chapter to the extent the provisions under IC 30-5 do not conflict with explicit requirements under this chapter.

(b) With respect to the written appointment of a health care representative under section 7 of this chapter, whenever the appointment authorizes health care to be withdrawn or withheld from an individual with a terminal condition (as defined in IC 16-36-4-5), the language in IC 30-5-5-17 must be included in the appointment in substantially the same form.

*As added by P.L.2-1993, SEC.19.*

**IC 16-36-1-15****Separate consent for telemedicine services not required**

Sec. 15. A health care provider (as defined in IC 16-18-2-163(a)) may not be required to obtain a separate additional written health care consent for the provision of telemedicine services.

*As added by P.L.185-2015, SEC.17.*

**IC 16-36-1-16****Study concerning costs and benefits of data base for health care consent; report to legislative council**

Sec. 16. (a) The state department shall study the costs and benefits of the implementation of a data base for maintaining health care consents made under this chapter.

(b) The study must include the following:

(1) The costs of establishing and maintaining a data base to store the health care consents.

(2) The persons that should have access to the data base and the type of security necessary to protect the data stored in the data base.

(3) The process for individuals to use to file a health care consent on a voluntary basis.

(c) Before October 1, 2016, the state department shall report the state department's findings in the study under this section in writing to the legislative council in an electronic format under IC 5-14-6.

(d) This section expires December 31, 2017.

*As added by P.L.29-2016, SEC.1.*